MOHANNAD TAHA ISMAIL A

v.

PP

COURT OF APPEAL, PUTRAJAYA B
LINTON ALBERT JCA
MOHTARUDIN BAKI JCA
MOHD ZAWAWI SALLEH JCA
[CRIMINAL APPEAL NO: B-05-281-2011]
28 MARCH 2013 C

CRIMINAL LAW: *Penal Code - Section 302 - Murder - Conviction and sentence - Appeal against - Death of child - Nexus between appellant and death of child - Whether proved - Whether evidence showed appellant carried out acts causing death of child - Circumstantial evidence - Whether fully considered and subjected to maximum evaluation - Whether defence mere denial - Whether appellant's narration consistent with injuries sustained by child - Whether misdirection by trial judge - Whether appellant raised reasonable doubt on prosecution's case* D

The appellant was charged with the murder of a child ('the deceased'), an offence under s. 302 of the Penal Code. The appellant was staying with the deceased child's mother (SP2) and the deceased at the material time. According to SP2, the deceased used to complain that the appellant was constantly beating her when SP2 was at work. On 12 October 2009, at about 11.30am, SP2 had received a call from the appellant, who was complaining angrily that the child had urinated uncontrollably and he would punish her. At about 4.30pm, the appellant called again, this time to say that the child was in a coma. The appellant had then taken a taxi to SP2's office to fetch her at 5.30pm. They returned home at 7.30pm and on arrival, SP2 saw that the child was in a serious condition as she was having breathing difficulty. After about 20 minutes, the child stopped breathing. The appellant had tried to perform CPR to revive the child but to no avail. The child was then brought to the emergency ward but was pronounced dead. Autopsy on the victim's body was performed by the pathologist, SP3, who confirmed that the child's cause of death was "massive subdural haematoma due to violent shaking". The learned trial judge found that the appellant had, through several acts, caused the death of the child and held that there was a *prima facie* case for murder. At the end of the defence case, the appellant was E F G H I

convicted and sentenced to death. Dissatisfied, the appellant appealed. The appellant canvassed these following grounds in his appeal (i) that the learned judge had misdirected himself when he failed to conduct a maximum evaluation on the evidence adduced by the prosecution; and (ii) alternatively, the trial judge had misdirected himself when he failed to appreciate the defence case.

Held (dismissing appeal; affirming conviction and sentence) Per Mohd Zawawi Salleh JCA delivering the judgment of the court:

(1) The prosecution's case was anchored on the evidence of SP2. The trial judge had in his judgment tested SP2's evidence from various angles. The trial judge had found that the prosecution had come clean when SP2 admitted in the examination-in-chief that she had made a false report because she felt pressured when the report was made and that she had to come up with the idea that the maid had beaten the child to convince the appellant to allow her to bring the child to the hospital. The trial judge, after having considered the surrounding circumstances of the case, accepted SP2's explanation. The trial judge had carefully assessed, sifted, scanned and scrutinised SP2's evidence before coming to the conclusion that SP2 was a witness of truth. (paras 21-24)

(2) Circumstantial evidence that proves the guilt of the accused must be fully established by the prosecution. Such evidence must show that only the appellant had committed or carried out an act or several acts that had caused the death of the child. There was sufficient evidence herein that proved the nexus between the appellant and the death of the child. The appellant had been alone with the child at the material time. Further, according to SP3, the shaking event occurred repeatedly within a week and the injury sustained could affect the urinary system and cause the victim to fall into unconsciousness. This was consistent with SP2's evidence that the child had complained to her a week prior to her death that the appellant had abused her. On that fateful day, the child had fallen into unconsciousness. The appellant's conduct and his reluctance to bring the child to receive medical treatment were also relevant. (para 30)

(3) The prosecution had established *via* SP3's evidence and the autopsy report that the appellant had abused the child. There were 34 wounds, injuries and bruises on various parts of the child's body. She was also found to have been physically and sexually abused by the appellant as traces of the appellant's spermatozoa was found on the child's singlet. The intention to cause bodily injuries could not be accidental or unintentional. The trial judge had fully considered the circumstantial evidence that existed in this case and had subjected them to a maximum evaluation. (paras 32 & 33)

(4) The appellant's defence was that he denied causing the child's death and that he had never abused the child as it was SP2 who was abusing her. However, the appellant's evidence, when tested against the prosecution's evidence, was in conflict with, or outweighed by the proved facts of the case. According to SP12 (grandfather of the deceased) SP2 had never abused the child. Further, the allegation that SP2 hit the child with a mopping stick and a towel was also rebutted by SP3's evidence that stated the injuries found on the child's back could only have been caused by fist punches and the injury on the child's pubic was caused by someone pressing a finger into her genital area. The appellant's narration was totally inconsistent with the actual injury sustained by the child. If the appellant had been genuine to bring the child to seek medical treatment, he would not have left the child unattended when he fetched SP2 from her office. The said conduct had greatly affected the probability of the appellant's version of the case, especially his main defence that his relationship with the deceased child was good and that he never abused the child. (paras 41 & 43)

(5) The trial judge had considered and weighed the defence put up by the appellant adequately. There was no serious non-direction which amounted to a misdirection by the trial judge. The trial judge had evaluated the relevant circumstances and assessed the credibility of the witnesses before arriving at the conclusion that the prosecution had established its case beyond reasonable doubt. The appellant had failed to raise a reasonable doubt on the prosecution's case. The appellant was thus rightly convicted and sentenced. (paras 46 & 48)

A ***Bahasa Malaysia*** *Translation Of Headnotes*

Perayu telah dituduh dengan pembunuhan seorang kanak-kanak perempuan ('si mati'), iaitu satu kesalahan di bawah s. 302 Kanun Keseksaan. Perayu tinggal bersama dengan ibu kepada si mati
B (SP2) serta si mati pada waktu material. Menurut SP2, si mati telah beberapa kali mengadu kepada SP2 bahawa perayu telah banyak kali memukul si mati semasa SP2 di tempat kerja. Pada 12 Oktober 2009, pada pukul 11.30 pagi, SP2 telah menerima panggilan daripada perayu, yang dengan nada marah mengadu
C bahawa si mati telah membuang air kecil tanpa kawalan dan perayu akan menghukumnya. Pada pukul 4.30 petang, perayu telah menelefon SP2 sekali lagi, dan kali ini untuk memberitahu bahawa si mati berada dalam keadaan koma. Perayu selepas itu telah menaiki sebuah teksi untuk mengambil SP2 di pejabatnya
D pada pukul 5.30 petang. Mereka kembali ke rumah pada pukul 7.30 malam dan SP2 mendapati bahawa si mati berada dalam keadaan serius kerana mengalami kesukaran untuk bernafas. Selepas 20 minit, si mati telah berhenti bernafas. Perayu kemudiannya telah cuba melakukan CPR untuk memulihkan si mati
E tetapi tidak berjaya. Si mati kemudiannya telah dibawa kepada wad kecemasan tetapi telah diisytiharkan meninggal dunia. Bedah siasat telah dilakukan ke atas mayat si mati oleh pakar patologi, SP3, yang mengesahkan bahawa kematian si mati adalah disebabkan 'hematoma subdural besar-besaran akibat gegaran ganas'. Yang arif
F hakim bicara telah mendapati bahawa perayu telah, melalui beberapa tindakan, menyebabkan kematian si mati dan memutuskan terdapat kes pembunuhan *prima facie*. Di akhir kes pembelaan, perayu telah disabitkan dan dihukum mati. Tidak berpuas hati, perayu membuat rayuan. Perayu memberikan
G beberapa alasan bagi rayuan ini (i) bahawa yang arif hakim telah tersalah arah apabila beliau gagal membuat penilaian maksimum ke atas keterangan yang dikemukakan oleh pihak pendakwaan; dan (ii) secara alternatif, hakim bicara telah tersalah arah apabila beliau gagal menimbangkan kes pembelaan dengan betul.

H **Diputuskan (menolak rayuan; mengesahkan sabitan dan hukuman)**
Oleh Mohd Zawawi Salleh HMR menyampaikan penghakiman mahkamah:

I **(1)** Kes pendakwaan telah berlandaskan kepada keterangan SP2. Hakim bicara dalam penghakimannya telah menguji keterangan SP2 dari pelbagai sudut. Hakim bicara telah mendapati bahawa pihak pendakwaan telah membuat pengakuan bersih apabila

SP2 mengaku semasa pemeriksaan utama bahawa SP2 telah membuat laporan palsu kerana SP2 terdesak semasa laporan dibuat dan SP2 telah tampil dengan cadangan bahawa pembantu rumah mereka yang telah memukul si mati supaya dapat meyakinkan perayu membenarkan SP2 membawa si mati ke hospital. Hakim bicara, selepas membuat pertimbangan berkenaan keadaan sekeliling kes, telah menerima penjelasan SP2. Hakim bicara telah menilai dengan teliti, menapis, mengimbas dan meneliti keterangan SP2 sebelum membuat kesimpulan bahawa SP2 adalah saksi yang bercakap benar.

(2) Keterangan ikut keadaan yang membuktikan tertuduh bersalah harus dibuktikan sepenuhnya oleh pihak pendakwaan. Keterangan itu mesti menunjukkan bahawa hanya perayu yang telah melakukan atau menjalankan tindakan atau beberapa tindakan yang telah menyebabkan kematian si mati. Terdapat keterangan yang memadai di sini yang membuktikan *nexus* di antara perayu dan kematian si mati. Perayu telah bersendirian dengan kanak-kanak itu pada waktu material tersebut. Seterusnya, menurut SP3, tindakan gegaran telah berlaku beberapa kali dalam seminggu dan kecederaan yang dialami boleh memberi kesan kepada sistem air kencing dan menyebabkan mangsa dalam keadaan tidak sedar diri. Ini adalah selaras dengan keterangan SP2 bahawa anaknya telah mengadu kepada SP2 seminggu sebelum kematiannya yang perayu telah menderanya. Pada hari kejadian itu, si mati telah tidak sedar diri dan tindakan perayu serta keengganannya untuk membawa si mati menerima rawatan perubatan juga relevan.

(3) Pihak pendakwaan telah membuktikan, melalui keterangan SP3 dan laporan bedah siasat, bahawa perayu telah mendera si mati. Terdapat 34 kesan luka, kecederaan dan lebam-lebam pada pelbagai bahagian tubuh si mati. Si mati juga didapati telah didera secara fizikal dan seksual oleh perayu kerana terdapat kesan-kesan spermatozoa perayu pada baju si mati. Niat untuk menyebabkan kecederaan tubuh badan bukanlah akibat kemalangan atau tidak disengajakan. Hakim bicara telah mempertimbangkan sepenuhnya keterangan ikut keadaan yang wujud di dalam kes ini dan ia tertakluk kepada penilaian maksimum.

(4) Pembelaan perayu adalah bahawa perayu menafikan dia telah menyebabkan kematian si mati dan perayu tidak pernah mendera si mati dan sebenarnya SP2 yang telah menderanya. Walau bagaimanapun, keterangan perayu, apabila diuji dengan keterangan pihak pendakwaan, adalah bertentangan dengan, atau diatasi oleh fakta-fakta kes yang telah dibuktikan. Menurut SP12 (datuk kepada si mati), SP2 tidak pernah mendera si mati. Dakwaan bahawa SP2 telah memukul si mati dengan kayu mengemop dan tuala telah dipatahkan oleh keterangan SP3 yang menyatakan kecederaan yang didapati pada bahagian belakang badan si mati hanya boleh disebabkan tumbukan genggaman dan kecederaan pada kemaluan si mati disebabkan oleh seseorang yang telah menekan jarinya ke dalam kemaluan si mati. Apa yang dikatakan oleh perayu adalah tidak konsisten dengan kecederaan sebenar yang dialami oleh si mati. Jika perayu dengan perasaan ikhlas ingin membawa si mati untuk mendapatkan rawatan perubatan, perayu tidak akan meninggalkan si mati tanpa pengawasan apabila perayu pergi mengambil SP2 dari pejabatnya. Tindakan tersebut telah banyak memberi kesan kepada kebarangkalian versi perayu berkenaan kes ini, terutama sekali pembelaan utamanya bahawa perhubungannya dengan si mati adalah bagus dan perayu tidak pernah mendera si mati.

(5) Hakim bicara telah mempertimbangkan dengan secukupnya pembelaan perayu. Tidak berlaku salah arahan yang serius yang menyebabkan hakim bicara tersalah arah. Hakim bicara telah menilai hal keadaan yang relevan dan kredibiliti saksi-saksi sebelum membuat kesimpulan bahawa pihak pendakwaan telah membuktikan kesnya melampaui keraguan munasabah. Perayu telah gagal menimbulkan keraguan munasabah terhadap kes pendakwaan. Dengan itu, sabitan dan hukuman perayu adalah betul.

Case(s) referred to:

Andy Bagindah v. PP [2000] 3 CLJ 289 CA ***(refd)***

Chan Kwee Fong v. PP [2010] 3 CLJ 671 CA ***(refd)***

Dato Mokhtar Hashim & Anor v. PP [1983] 2 CLJ 10; [1983] CLJ (Rep) 101 ***(refd)***

Magendran Mohan v. PP [2011] 1 CLJ 805 ***(refd)***

PP v. Abd Razak Dalek [2006] 4 CLJ 129 HC ***(refd)***

PP v. Datuk Haji Harun Haji Idris (No. 2) [1976] 1 LNS 184 ***(refd)***

PP lwn. Khairul Adli Ramli & 2 Yang Lain [2006] 1 LNS 352 HC ***(refd)***

Virsa Singh v. State of Punjab AIR 1958 SC 465 ***(refd)***

Legislation referred to:
Penal Code, ss. 300(c), 302

For the appellant - Hisyam Teh Poh Teik; M/s Teh Poh Teik
J Kuldeep Kumar; M/s J Kuldeep Kumar & Co
For the respondent - Munahyza Mustafa; DPP

[Appeal from High Court, Shah Alam; Criminal Trial No: 45B-17-2010]

Reported by Suhainah Wahiduddin

JUDGMENT

Mohd Zawawi Salleh JCA:

The Antecedents

[1] The appellant was charged with the following offence:

> Bahawa kamu, pada 12 Oktober 2009 jam antara 7.30 petang sehingga 8.30 malam, di Tower 9/D3/9 Palazzo Tower, Venice Hill Condominium, Batu 9 Cheras, di dalam daerah Hulu Langat, di dalam Negeri Selangor Darul Ehsan, telah membunuh xxx (MyKid No.: xxx) dan dengan itu kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen 302 Kanun Keseksaan.

[2] The appellant was tried at the Shah Alam High Court. At the end of the defence case, the appellant was convicted and sentenced to death. Hence this appeal.

[3] We have heard learned counsel for the appellant and learned Deputy Public Prosecutor. We have scrutinised the entire evidence adduced before the High Court. We unanimously dismissed the appeal and affirmed the conviction and sentence passed by the High Court.

[4] We now give the reasons for our decision.

Facts Of The Case

[5] Ellina Mualad Mahather (SP2) is the natural mother of the deceased child, who was born on 27 September 2006. SP2 was earlier married to one Ayman Hussin Mahmod. After their divorce, SP2 and the appellant became a couple, and they stayed together with the deceased child.

[6] At the beginning, the relationship between the appellant and the child was good. The child used to call the appellant "Baba". Things changed when the appellant started to beat the child, sometimes with his hand, sometimes with clothes hanger or a ruler. The beatings took place when SP2 was at work. When SP2 returned from work, the child would complain to her, and she had seen bruises on the child's body. SP2 also witnessed the appellant beating the child during Saturdays and Sundays, when she was not working. SP2 tried to put a stop to the abuse but was scolded by the appellant. The appellant also prevented SP2 from taking the child to the hospital.

[7] At the material time, they were staying in a condominium at Tower 9. SP2 was working as an Administration Executive at JPZ Construction & Engineering Sdn Bhd whilst the appellant was a drop-out from Lim Kok Wing University. While she worked, the appellant cared for the child.

[8] A week before the tragedy, the child complained to SP2 that the appellant had beaten her. SP2 observed that there were bruises on the child's face and her head was swollen. After the incident, the child was having urinary problems.

[9] On 12 October 2009, SP2 left for work at 5.30am. Before she left the house, SP2 observed that her daughter was lying on the sofa and was drinking milk. Her physical condition was fine except for some old injuries on the face and head that were almost healed. At about 11.30am, SP2 received a call from the appellant. The appellant complained angrily and the child urinated uncontrollably and he would punish her. SP2 told the appellant to ignore it.

[10] At about 2.30pm, the appellant called SP2 and informed her that the child was having some eyesight problem as she could not see. The appellant also told SP2 that the child had hit herself on the sliding door. The appellant said he would go to the security guard to borrow a torchlight to check on her eyes. SP2 told the appellant to call later as she was not free.

[11] At about 4.30pm, the appellant called again, this time to say that the child was in coma. The appellant sounded panicky and the appellant said that he would come and fetch her in a taxi. At the same time SP2 had asked her employer to leave early. The appellant came to SP2's office at 5.30pm and they went to Giant to buy pampers.

[12] They returned home at about 7.30pm. On arrival, SP2 saw that the child was in a serious condition as she was having difficulty in breathing and several injuries on her face. Saddened, both SP2 and the appellant started crying.

[13] After about 20 minutes, the child stopped breathing. The appellant then tried to perform CPR to revive the child but to no avail. SP2 suggested that they should bring the child to the hospital but the appellant refused. He was afraid that he might be arrested and faulted for beating the child.

[14] SP2 suggested that they blame the Indonesian maid for harming the child. The appellant finally relented and they rushed the child to the Kajang Hospital.

[15] The child was brought to the emergency ward but was pronounced dead. According to Dr Rageswary Marappan (SP9), the initial examination showed that the child was already dead when taken to receive treatment. Further inspections showed signs of bruises ranging from various colours on the forehead, arms, legs and body of the victim. She also found evidence that the child could have been sexually abused.

[16] Autopsy on the victim's body was performed by the pathologists, Dr Abdul Karim bin Haji Tajudin (SP3). He confirmed that the child's cause of death was "massive subdural haematoma due to violent shaking".

The Appellant's Appeal

[17] Before this court, the appellant canvasses the following grounds in his appeal:

(a) That the learned trial judge misdirected himself when he failed to conduct a maximum evaluation on the evidence adduced by the prosecution. Had he done so he would have held that there is no *prima facie* case for murder; and

(b) Alternatively, the learned trial judge misdirected himself when he failed to appreciate the defence case.

[18] The learned Deputy Public Prosecutor has refuted the contentions of the learned counsel for the appellant. The respondent submitted that the appeal filed by the appellant herein should be dismissed and the conviction and sentence under s. 302 of the Penal Code passed by the High Court should be affirmed.

[19] We will discuss each of the grounds of appeal in turn.

Ground (a): There is no prima facie case of murder

[20] The prosecution's case was anchored on the evidence of SP2. The complaint of the appellant is that there is no maximum evaluation of the evidence of SP2. The appellant submitted that the trial judge should have tested SP2's evidence from various angles ie,

(a) Motive;

(b) The fact that SP2 had lied in her police report (exh. P9); and

(c) SP2 had only complained of the alleged abused by the appellant for the first time when she was desperate because she was the real abuser of the child.

[21] With respect, the court could not accept the contention. We have carefully scrutinised the records and find that the learned trial judge had in his judgment, tested SP2's evidence from various angles.

[22] From pp. 425 to 427 of the appeal records, the learned trial judge had directed his attention to the analysis of SP2's evidence. SP2 said she was not afraid that she will be charged with an offence of murder, but for making a false report.

[23] We noted that the learned trial judge has specifically addressed the issue of the false report (exh. P9) made by SP2. The learned trial judge found that the prosecution had come clean when SP2 admitted in examination-in-chief that she made a false report. SP2 gave various reasons for having done so:

(a) She felt pressured when the report was made;

(b) She was fearful as she does not know the actual cause of her daughter's injuries;

(c) She had to come up with the idea that the maid had beaten child to convince the appellant from allowing her to bring the child to the hospital;

(d) She was confused and she still cared for the appellant. She was worried that the appellant will be arrested and their lives will be affected.

[24] The learned trial judge, after having considered the surrounding circumstances of the case, accepted SP2's explanation. The impression as to the SP2's demeanour was critically tested against the totality of the evidence. As can be seen from the impugned judgment, the learned trial judge had carefully assessed, sifted, scanned, and scrutinised SP2's evidence before coming into conclusion that SP2 was a witness of truth:

> 22. Mahkamah mendapati SP2 telah bercakap benar atas alasan-alasan mengapa dia melaporkan P9 itu. SP2 tidak berbohong seperti terperangkap membohong semasa memberi keterangan semasa prosiding Mahkamah. SP2, antara lainnya (seperti di atas), memberi alasan apa sebenarnya yang dia takut, iaitu kerana telah membuat laporan polis palsu. SP2 tidak takut jika dituduh di bawah seksyen 302, Kanun Keseksaan, tentu sekali kerana dia tidak mencederakan anaknya sendiri. OKT berperanan telah menghasilkan SP2 membuat laporan P9 seperti itu. OKT mengambil bahagian lebih berpengaruh dan SP2 berbuat demikian dalam keadaan begitu takut dan amat panik, memandangkan juga, dia (SP2) masih menyayangi OKT pada masa itu.
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> 23. Setelah meneliti secara maksimum mengapa alasan laporan palsu telah dibuat oleh SP2, Mahkamah mendapati ia beralasan yang boleh diterima mengapa ia telah dibuat begitu (seperti yang disebut di atas). Keterangan SP2 didepankan awal-awal lagi dalam pemeriksaan awal SP2 dan tidak disembunyikan sama sekali. Ia bukanlah berbentuk satu pembohongan yang SP2 terperangkap semasa memberi keterangan. Ia juga bukanlah satu percanggahan yang boleh merosakkan keterangan SP2. Kalau ada pun percanggahan (yang mana Mahkamah tidak mendapatinya), ia tidak boleh menjadikan SP2 seorang pembohong (*Khoon Chye Hin v. PP* [1961] 27 MLJ 105; *Mohd Alias v. PP* [1983] 2 MLJ 172, *Pie bin Chin v. PP* [1985] 1 MLJ 234, *Che Omar Mohd Akhir v. PP* [1999] 2 CLJ 780).
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> 24. Mahkamah telah memerhati sedekat-dekatnya perilaku (demeanour) SP2 dan membuat pendapat SP2 tidak mirip sedikitpun untuk berbohong atau dia sememangnya bukanlah seorang pembohong dalam memberi keterangan di Mahkamah. Keterangannya adalah satu jeritan atau tempekan kebenaran rentetan peristiwa yang berlaku satu persatu,

A malah alasan-alasan bagi laporan P9 dizahirkan dan tidak dipendam. Keterangan SP2 adalah satu tangisan seorang ibu di Mahkamah keadilan atas perbuatan OKT. Mahkamah membuat pendapat sedemikian dalam pemerhatiannya ke atas keterangan SP2 secara menyeluruh.

B (See pp. 427-428, appeal records).

[25] As an appellate court, we should be very slow to disturb the finding of the trial judge on the credibility of witnesses as it is within the purview of the trial judge who has the audio visual C advantage in assessing the witness. (See *Andy Bagindah v. PP* [2000] 3 CLJ 289; [2003] 3 MLJ 647 and *PP v. Datuk Haji Harun Haji Idris (No. 2)* [1976] 1 LNS 184; [1977] 1 MLJ 15).

[26] The pathologist (SP3) has described the cause of death as D "massive subdural haematoma due to violent shaking". The appellant contented that the learned trial judge had misdirected himself when he failed to appreciate that there is no evidence by SP2 of SP12 (grandfather of the deceased child) to show that the appellant had at any point of time violently E shaken the child. There was indeed no maximum evaluation.

[27] In this instant case, there is no dispute that the evidence adduced by the prosecution is wholly circumstantial in nature. The law on circumstantial evidence is clear. In *Dato' Mokhtar Hashim & Anor v. PP* [1983] 2 CLJ 10; [1983] CLJ (Rep) 101; F [1983] 2 MLJ 232, the Federal Court stated that:

> Where circumstantial evidence is the basis of the prosecution case the evidence proved must irresistibly point to one and only one conclusion, the guilt of the accused, but in a case tried without a jury the failure by the court to expressly state this is not fatal G and it would suffice if it merely says that it is satisfied as to the guilt of the accused beyond reasonable doubt *(Jayaraman and Ors v. Public Prosecutor* [1982] 2 MLJ 306, 310).

[28] In *Magendran Mohan v. PP* [2011] 1 CLJ 805; [2011] H 6 MLJ 1, the Federal Court discussed the status of circumstantial evidence and stated that:

> The entire prosecution case rested on circumstantial evidence …
>
> The question, therefore, is whether the prosecution proved the I guilt of the appellant beyond all reasonable doubt. In a case of circumstantial evidence, all the circumstances from which the conclusion of the guilt is to be drawn should be fully and cogently established.

> … The circumstances must be satisfactorily established and the proved circumstances must bring home the offences to the accused beyond all reasonable doubt. … In other words when there is no direct witness to the commission of murder and the case rests entirely on circumstantial evidence, the circumstances relied on must be fully established …
>
> … If any of the circumstances proved in a case are consistent with the innocence of the accused or the chain of the continuity of the circumstances is broken, the accused is entitled to the benefit of the doubt. … There is a long distance between may be true and must be true. The prosecution has to travel all the way to establish fully all the chain of events which should be consistent only with hypothesis of the guilt of the accused …
>
> … In other words, there must be a chain of evidence so far consistent and complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all probability the act must have been done by the accused and the accused alone.

[29] It is clear from the case cited above the circumstantial evidence that proves the guilt of the accused must be fully established by the prosecution. Such evidence must show that only the appellant had committed or carried out an act or several acts that had caused the death of the child.

[30] In the instant case, having carefully examined the evidence, we are in agreement with the learned trial judge that there are sufficient evidence that proved the nexus between the accused and the death of the child. The evidence may be summarised as follows:

(a) At the material time, the appellant was alone with the child;

(b) According to SP3, the shaking event occurred repeatedly within a week. The injury sustained could affect the urinary system and cause the victim to fall into unconsciousness;

(c) This was consistent with SP2's evidence that the child had complained to her a week prior to her death that the appellant had abused her. Since then, the child was having urinary problems;

(d) On that fateful day, the appellant informed SP2 that the child urinated uncontrollably.

(e) The child fell into unconsciousness on that day; and

(f) The appellant's conduct and his reluctance to bring the child to receive medical treatment were also relevant.

[31] It is trite that to succeed in any murder trial by relying on s. 300(c) of the Penal Code, the prosecution must established that:

(a) the death of the deceased;

(b) the death was caused by the accused;

(c) he intended to bodily injury sufficient in the ordinary cause of nature to cause death.

(See *Virsa Singh v. State of Punjab* AIR 1958 SC 465; *PP v. Abd Razak Dalek* [2006] 4 CLJ 129; [2007] 2 MLJ 225; *PP lwn. Khairul Adli Ramli & 2 Yang Lain* [2006] 1 LNS 352; [2007] 6 MLJ 754 and *Chan Kwee Fong v. PP* [2010] 3 CLJ 671; [2007] 1 MLJ 441)

[32] In the instant case, we found that the prosecution had established *via* SP3's evidence and the autopsy report (exh. P30) that:

(a) the appellant had abused the child;

(b) there were 34 wounds, injuries, bruises found on various parts of the child's body;

(c) the child suffered from massive subdural haematoma;

(d) it was due to violent shaking, and she was physically and sexually abused by the appellant; and

(e) Traces of the appellant's spermatozoa was also found on the child's singlet (exh. P11)

[33] After having carefully scrutinised the evidence in its entirety, we are in agreement with the learned trial judge that the intention to cause bodily injuries could not be accidental or unintentional. The trial judge had fully considered the circumstantial evidence that existed in this case and had subjected them to a maximum evaluation. We have no reason to disturb His Lordship's finding.

Ground (b): The learned trial judge had failed to appreciate the defence's case

The Defence Case

[34] The appellant gave his own version of events that took place on 12 October 2009. SP2 left for work between 6 to 7am in the morning. He denied having called SP2 at about 11.30am to complain that the child had urinated as the child was wearing pampers all the time.

[35] On the same morning, the child hit her head to the master bedroom's door knob. At about 12 noon, the appellant prepared milk for her but she told the appellant that she could not see. The child did not respond to the light when the appellant checked her eyesight with a torchlight which he borrowed from the guardhouse.

[36] The appellant then called SP2 and told her that the child could not see and wanted to take her to the hospital. SP2 did not allow because the appellant had no money, he was not the biological father and he had overstayed in Malaysia without valid identification documents.

[37] The appellant then went to the guardhouse again and attempted to sell his mobile phone to raise some money but could not do so.

[38] The appellant then called SP2 informing her that the child was in coma and asked her to come back quickly. The appellant then took a taxi to fetch SP2. On the way back SP2 wanted to stop at Giant to buy pampers.

[39] When they returned home, the child was lying on a sofa. The appellant wanted to take her to the hospital and was again refused by SP2. The appellant then went to take his shower. 15 minutes later, SP2 cried out saying "my daughter died". Both SP2 and the appellant performed CPR to revive the child but failed. He placed two fingers on the child's chest while pressing. According to the appellant, it was done gently.

[40] The child was then rushed to the hospital but was pronounced dead on arrival.

[41] The appellant agreed that the police report to be lodged in the manner suggested by SP2 then only the child be brought to the hospital. He denied causing the child's death. The appellant said he never abused the child and it was SP2 who was abusing the child.

[42] The appellant narrated that SP2 had beaten the child when they were staying at Tower 33. SP2 hit the child's back using a mopping stick, and hit the child's genital area using a towel.

[43] The appellant's evidence, when tested against the prosecution's evidence, is in conflict with, or outweigh by, the proved facts of the case. Our reasons are as follows:

(a) The appellant stated that SP2 had beaten the child when they were staying at Tower 33. Yet SP12 who was also staying together with them when the alleged beatings took place stated in the affirmative that SP2 had never abused the child;

(b) The allegation that SP2 hit the child with a mopping stick and the towel was also rebutted by SP3's evidence. The pathologist stated that the injuries found on the child's back could only be caused by fist punches. The injury on the child's pubic was caused by someone pressing a finger into her genital area.

(c) The appellant said that the child hit the door knob of the master bedroom. The photograph (exh. P6(13)) showed that it was a pointed door knob in the shape of an 'x'. The appellant's narration was totally inconsistent with the actual injury sustained by the child (see photograph exh. P8(B)) as the pathologist stated that the injury was caused by the knuckle.

(d) Further, ASP Zuraimi (SP13), the forensic officer also could not find any blood stain on any part of the bedroom door.

(e) The fact that the CPR was done gently was also rebutted by SP3's evidence. The pathologist stated that the fracture on the child's fifth and sixth rib was caused by severe pressure applied during CPR.

[44] Another issue to be addressed is the appellant's weak disposition and his unreasonable behaviour. Based upon the appellant's narrative, he could not bring the child to the hospital

because SP2 forbid him to do so. If he was genuine to bring the child to seek medical treatment, he would not have left the child unattended when he fetched SP2 from her office. The appellant also agreed with the prosecution that he could have brought the child along when he fetched SP2 from the office, and they could go straight to the hospital.

[45] The above conduct has greatly affected the probability of the appellant's version of the case, especially his main defence that his relationship with the deceased child was good and he never abused the child.

[46] We are satisfied that the learned trial judge has considered and weighed the defence put up by the appellant adequately. The learned trial judge has viewed the whole of the evidence objectively and from all angles. There is no serious non-direction which amounts to a misdirection by the learned judge.

[47] As can be seen from the grounds of judgment, the learned trial judge has considered the relevant evidence adduced at the trial, evaluated the relevant circumstances and assessed the credibility of the witnesses before arriving at the conclusion that the prosecution has established its case beyond reasonable doubt and the appellant has failed to raised a reasonable doubt on the prosecution's case.

[48] From what has been discussed above, the appeal is not impressed with merit. The appellant was rightly convicted and sentenced. In the result, we dismissed the appeal and affirmed the conviction and sentence passed by the High Court.